

THE MARK O. HATFIELD

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Employment

A store cashier filed an action against his former employer alleging that he was terminated in retaliation for seeking reasonable accommodations for his disability. Plaintiff suffers from diabetes and sought regularly scheduled work breaks and/or re-assignment. Defendant claimed that plaintiff was terminated based upon sexual harassment reports from other female employees. Defendant conceded that plaintiff was "disabled" within the meaning of state and federal statutes, but argued that plaintiff was not "qualified" because he was unable to perform the essential job functions of a cashier due to other medical conditions including a neurological deficit, attention deficit disorder and hyperactivity.

Judge Dennis James Hubel denied defendant's motion for summary judgment as against the state and federal statutory discrimination claims. The court noted that plaintiff had performed his job as a cashier for a 2 year period which was sufficient evidence that he was qualified for the job. The court also noted that,

under Barnett v. U.S.Air, evidence that plaintiff could perform other jobs for the defendant also was sufficient to avoid summary judgment on these claims. The court acknowledged defendant's proffer that plaintiff had performance problems throughout the course of his two years, including 22 instances of coming up short on his register tally, however, the employer failed to produce any evidence to show that such performance problems were unusual among cashiers.

Judge Hubel also found that plaintiff presented evidence to create a triable issue as to whether reasonable accommodations were possible and whether defendant's proffered reason for the discharge was pretextual. Further, while the note from plaintiff's doctor was somewhat ambiguous, the court found it sufficient to create a triable claim on the issue of whether the letter triggered the need to engage in the ADA's interactive process.

Judge Hubel granted the

defendant's motion for summary judgment against plaintiff's common law wrongful discharge claim, holding that the claim was precluded by the presence of adequate statutory remedies. Hadley v. Wal-Mart Stores, Inc., CV 00-1433-HU (Opinion, Nov. 19, 2001).

Plaintiff's Counsel:

Michael D. Callahan

Defense Counsel:

David Hosenpud (Local)

**7** After plaintiff accepted an offer of employment, the defendant then called plaintiff to inquire about an earlier bankruptcy filing. Thereafter, defendant withdrew the job offer. Plaintiff filed an action claiming bankruptcy discrimination under 11 U.S.C. § 525, common wrongful discharge and breach of contract. Defendant moved to strike an attorney fee prayer from the federal claim and to dismiss the common law claim.

Judge Anna J. Brown granted the defense motion. She held that attorney fees were not recoverable under § 525 of the Bankruptcy Act and that, absent express

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Congressional sanction, the American rule that litigants should bear their own fees would apply.

The court also dismissed the common law claim, noting that Oregon recognized only two limited exceptions to the general principal of at-will employment and that plaintiff's claim of bankruptcy discrimination failed to fit within either narrow public policy related exception. Pratt v. Phoenix Home Life Mutual, CV 01-1031-BR (Opinion, Nov. 7, 2001).

Plaintiff's Counsel:

Michael Schumann

Defense Counsel:

Douglas Andres

## Jurisdiction

A small, closely held Oregon corporation filed an action against a flight simulator developer alleging that the defendant breached confidentiality agreements entered into when the parties were negotiating a potential joint venture. The negotiations broke down, but the defendant ended up completing the deal plaintiff had proposed by setting up a separate entity in Eugene, Oregon. Defendant is a Pennsylvania corporation, headquartered in Pennsylvania.

On a defense motion to dismiss for lack of personal jurisdiction, Judge Anna J. Brown held that

defendant's contacts with the forum were too attenuated to satisfy the test for general jurisdiction. Accepting plaintiff's assertions as true for the purposes of the motion, the court held that plaintiff made out a prima facie case of specific personal jurisdiction. However, because discovery was incomplete, Judge Brown denied the motion as against the specific jurisdiction issue without prejudice, noting that plaintiff would have to prove jurisdictional facts at trial by a preponderance of the evidence. nMotion, Inc. v. Enviornmental Tectonics Corp., et al., CV 01-524-BR (Opinion, Nov. 21, 2001).

Plaintiff's Counsel:

Michael Ratoza

Defense Counsel:

Regina Hauser

## Education

Parents of an autistic child filed an action against their school district under the IDEA claiming that the district denied their child a Free and Appropriate Public Education (FAPE). On review from an administrative proceeding, Judge Robert E. Jones largely adopted the detailed factual findings of the administrative law judge. The court noted that much of the plaintiffs' case was probably

barred under a recent Ninth Circuit decision which held that IDEA claims were governed by the Oregon Tort Claim Act's 2 year statute of limitations. Judge Jones invited the parties to address the impact of the court's decision with further briefing.

As for the parents' claim that the district violated the IDEA by failing to follow a particular methodology, Judge Jones rejected this argument. The court noted that the IDEA does not mandate that the best or most effective method be employed. Where the program chosen was reasonably calculated to enable the child to receive educational benefits, this is all that the IDEA requires.

The court also rejected claims that the district failed to administer necessary assessments. Judge Jones further found that the specific Individualized Education Programs (IEPs) were adequate. Pitchford v. Salem-Keizer School Dist., No. 24J, CV 00-629-JO (Opinion, August, 2001).

Plaintiffs' Counsel:

Steven Bogdon

Defense Counsel:

Mark Comstock